tenement, and the nature of the user totally excludes the owner from a part of his land. Instances exactly similar to the principal case have arisen concerning steam railroad tracks laid without authority along a street. It has generally been held that the owner of the fee of the street can maintain ejectment, the acts of the railroad being considered a sufficient ouster to support the action. *Carpenter & Oswego, etc. R. R.*, 24 N. Y. 655. As regards the nature of the ouster requisite in ejectment it is almost impossible to frame an exact rule, the authorities vary so in different jurisdictions. It might be suggested as a test that the ouster must be a permanent trespass, of a kind to substantially exclude the owner from a part of his fee. Ejectment has been allowed, however, for the projection of eaves, roof, and walls. *Murphy* v. *Bolger*, 60 Vt. 723. The Supreme Court of Illinois goes so far as to hold that where a telegraph company put its poles along a highway without compensating the owner of the fee, the latter may maintain ejectment for their removal. *Postal Telegraph Cable Co.* v. *Eaton*, 170 Ill. 513. If ejectment will lie under such circumstances, it is difficult to understand the ground for refusing the action in the principal case. The case is very briefly and unsatisfactorily reported, but on the facts given it seems impossible to support the decision.

Liability of Municipal Corporations for Torts. — Although there has been much litigation in our courts concerning the liability of municipal corporations for torts, the question is still involved in confusion. A recent decision by the New Hampshire court is therefore of value, not only for its full discussion of the subject, but also for its sound reasoning. The plaintiff, employed in the city of Concord waterworks, was injured by the negligence of the city's agents. The court held that the city could not escape liability either on the ground that it was a municipal corporation, or that to a certain extent the undertaking was governmental. *Rhobidas* v. *City of Concord*, 47 Atl. Rep. 82 (N. H.). The principal case is in accord with *Mulcairns* v. *City of Janesville*, 67 Wis. 24.

Most state constitutions provide that no private property shall be taken for public purposes without compensation. This provision rests upon the broad ground that if, as a result of a public undertaking, one man suffers, he should be repaid by all. Following out this principle, courts have held that where a property right of a citizen is in any way invaded during a public undertaking, he should be recompensed. *Ashley* v. *City of Port Huron*, 35 Mich. 296; *Nevins* v. *City of Peoria*, 41 Ill. 502. In both the cases cited, the ground of the decision was a recognition of the principles of natural justice which underlie the constitutional provision. It makes no difference in such a case whether the city was acting in its private corporate capacity or as a subdivision of the government. There is, however, an exception to this rule in those cases where the act is done by one who, though nominally the agent of the city, in reality is not, such as a police officer or a fireman. If this right to compensation is once recognized, there seems to be little reason why it should be confined to trespasses upon property. Whenever a private right is infringed as a result of a public work, particularly if it is an aggressive misfeasance, the same principle of equality should govern and compensation should be made. This is the position taken by the court in the principal case, and it seems to be the logical basis of liability. Certainly one great source of

confusion is eliminated, when it is no longer necessary to make a distinction between the public or governmental capacity and the private or corporate capacity of a municipal corporation. The authorities make it necessary, however, in such a case, to distinguish between a private right, recognized by the common law, and the right which a man receives, in common with all the public, and which depends upon the discharge of a purely governmental function, as in *Eastman* v. *Meredith*, 36 N. H. 284. The report of the principal case unfortunately does not give the circumstances of the injury so as to make it apparent whether the court would restrict the liability to acts of positive misfeasance. However, it is probable that no such refinement will be made. The modern tendency undoubtedly is to recognize that the duty to maintain property in a safe condition is in all cases purely a private and local duty, and that it makes no difference whether it is public and governmental property or property owned as a private corporate body. Goodnow on Municipal Home Rule, 176.

INJUNCTIONS AGAINST CRIMINAL PROCEEDINGS. — It was the old idea, founded largely on a *dictum* of Lord Hardwicke's in *Lord Montagu* v. *Dudman*, 2 Ves. Sen. 396, that courts of equity had no jurisdiction to enjoin criminal proceedings of any sort. Although there are many modern decisions to the same effect, such injunctions have been granted in a large number of comparatively recent American cases, in which it appeared that irreparable damage to property would result if the criminal proceedings were allowed to go on. *Central Trust Co.* v. *Citizens' St. R. R. Co.*, 80 Fed. Rep. 218. In a recent Georgia case, though it does not appear that irreparable damage was threatened, the court manifested a disposition to follow the old authorities to their full extent. *City of Bainbridge* v. *Williams*, 36 S. E. Rep. 935. Those who take the opposite view contend that where the element of irreparable damage is present, and the complainant further satisfies the court that the final judgment in the criminal suit, if reached, ought to be in his favor, equity, though having no jurisdiction in criminal matters *as such*, is not ousted of its ordinary jurisdiction, for the protection of property, because it happens that the damage threatened will be inflicted under the forms of criminal proceedings.

It is obviously no answer to this argument that the doctrine is new, for every department of our present equity jurisdiction was once an innovation. The objection, if any, must be a practical one, making the interference of equity clearly undesirable. Viewed in this light, the cases fall into two classes. In the first class the complainant relies on the invalidity of the statute under which proceedings are threatened, and the court of equity is therefore called upon to decide a pure question of law which the common law court must decide in the same form if the criminal proceeding is allowed to go on. There seems to be no practical objection to the settlement of that question by equity at the outset rather than by the court of law after irreparable damage has been done. In the second class of cases, in which the complainant relies simply on his innocence in fact of the offence charged, a new difficulty is presented. In order to grant the injunction in such cases, the court of equity must in effect try the complainant on the criminal charge, and, having found him not guilty, impose their decision upon the defendants, who are usually public officers